



California Fair Political Practices Commission

August 31, 1989

Honorable Howard Johnson
Councilmember, Town of Paradise
5555 Skyway
Paradise, CA 95969

Re: Your Request for Advice
Our File No. A-89-504

Dear Councilmember Johnson:

This is in response to your letter requesting advice regarding your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} Since your request refers to conduct that has already occurred, we cannot provide you with advice concerning that conduct. Regulation 18329(b)(8)(A), (copy enclosed) provides that formal written advice will be declined where the "requestor is seeking advice relating to past conduct." However, we have provided the following materials for your information with respect to future situations that may confront you.^{2/}

- A Guide to The Political Reform Act of 1974.
- The Political Reform Act.
- Regulations 18700 - 18704.3.
- Cosgrove Advice Letter, No. A-89-120, concerning interests in real property.
- Combs Advice Letter, No. A-89-177, concerning sources of income.
- Price Advice Letter, No. I-89-23, concerning interests in business entities.
- Martinez Advice Letter, No. I-88-473, concerning direct financial effects on a public official.

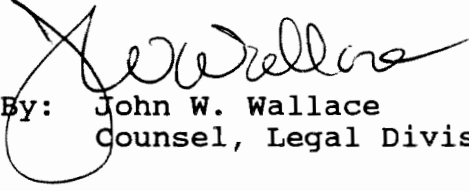
^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to Regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

If you have any further questions regarding this matter,
please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures



TOWN OF PARADISE

5555 Skyway, Paradise, California 95969

William L. Allen, M.D., Mayor
Lise A. Young, Vice Mayor
Larry R. Duncan, Council Member
Bob Jeffords, Council Member
Howard Johnson, Council Member

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(916) 872-6291

RECEIVED

August 10, 1989

Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804-0807

Dear Sirs:

I am a Councilman for the Town of Paradise and am enclosing an investigative opinion completed by our Town Attorney. This investigation was to determine the propriety of my vote and any conflict that I could have had with the principal or the project.

The facts are that (1) I own no property closer than 1/2 mile as the crow flies and one mile by road; (2) I have had no prior contact of any kind with the principal; (3) I did not know the principal before this project arose in March of this year; and (4) I have never made one penny from any relationship with the principal directly or peripherally.

I am requesting a letter from you with an opinion as to any conflict that you see. Please let me know if you need any further information from me with regard to your preparation of the requested opinion.

Thank you,

Howard Johnson

HOWARD JOHNSON
Council Member

MEMORANDUM

July 27, 1989

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TOWN OF PARADISE
Town Clerk's Office

TO: Town Council

FM: Donald F. Stanton, Town Attorney

RE: Conflict of Interest - Council Member Johnson/Plantation
Mobile Home Park

CONCLUSION.

Based upon the facts presented to me, it is improbable that a court would sustain an allegation of conflict of interest on the part of Council Member Johnson.

INVESTIGATION.

My conclusions are based upon information given to me by the parties in separate conferences with Member Johnson, Mr. Walter Blum, and Mr. Gary Gardino. Additionally, I inspected the premises located at 5420 Skyway, reviewed the transactions of a bank account set up for the purpose of operating that property, and collected information from the records of the County Assessor.

Should the Council desire verification of any information given to me, or not given to me, I suggest that the Council consider engaging the services of an auditor and/or a professional investigator.

FINDINGS.

1. None of the properties owned by either Member Johnson or Mr. Blum are located within 2500 feet of the site for the proposed Plantation Mobile Home Park, according to the County Assessor records.

2. The property located at 5420 Skyway is owned by Howard and Maureen Johnson and Walter D. Blum as tenants in common, pursuant to an agreement originally made among themselves and Ronald Z. Harris. Mr. Harris is no longer a party to the agreement.

cc - Council - jmg

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3. The agreement mentioned above specifies:

"The parties hereto agree that the relationship between them is that of tenancy in common with respect to the ownership of the subject property and with respect to the businesses being conducted on said premises and that the parties hereto are not partners either in connection with their ownership of the subject property nor with respect to their respective businesses.

4. Both Member Johnson and Mr. Blum operate their businesses out of a building located at 5420 Skyway. The parties share the building, the bathrooms, a copy machine, and equally divide the cost of utilities, repairs, upkeep, supplies, mortgage payments, and so forth. Except as mentioned above, each party has a separate room for their business, a separate entry, separate equipment, separate telephone lines, separate and independent accounting systems. The expenses of operating the building are paid by each party making their respective contributions to a separate checking account set up for building expenses. Expenses are paid from that account. Monthly contributions equal the monthly expenses. A review of the expenditures for the last two years revealed no expenditures that were not reasonably connected with the cost of maintaining the premises.

5. Both Member Johnson and Mr. Blum agree that their businesses are entirely separate with different specialties. One of them has no recollection of ever sharing an escrow with the other, while the other thought that they may have shared two escrows, one on a house and one on a vacant lot, both more than two years ago and neither one connected with Mr. Gardino.

6. Both Mr. Blum and Mr. Gardino recall that Mr. Blum sold to Mr. Gardino two vacant lots located in Paradise Pines more than three years ago. Both Mr. Blum and Mr. Gardino advise that these sales had no connection to Member Johnson.

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7. Both Mr. Blum and Mr. Gardino confirm that in late April, 1989, Mr. Gardino refused to give Mr. Blum a listing for the sale of a property owned by Mr. Gardino on Billie Road extension. On May 10, 1989, Marie Lee Realty presented Mr. Gardino with an unsolicited offer to purchase said property. The offer listed Mr. Blum as the listing agent even though there was no listing agreement between the parties. The sale was not consummated. Messrs. Johnson, Blum and Gardino all agree that Council Member Johnson had no knowledge of this transaction.

8. Mr. Blum and Mr. Gardino agree that Mr. Gardino and Mr. Blum have declined the opportunity to do any other business with one another.

9. Mr. Blum admits that his mother is the owner of Holly Hill Mobile Home Estates, but denies that she is in the business of selling mobile homes.

THE POLITICAL REFORM ACT.

The Political Reform Act provides:

Govt Code, 87100. Public Officials; State and Local.

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Govt Code, 87103. Financial Interest.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

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(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

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ANALYSIS.

Government Code, Section 87103(a).

All the parties agree that Member Johnson has no direct or indirect investment in the Plantation Mobile Home Park.

Government Code, Section 87103(b).

Review of the County Assessor's records reveal that Member Johnson owns no property within 2500 feet of the proposed Plantation Mobile Home Park.

Government Code, Section 87103(c).

Since the sale of the lots to Mr. Gardino took place more than 12 months ago, any income Member Johnson may have realized, if any, would be beyond the reach of the statute. Note also, that all parties agree that Member Johnson had no interest in either sale.

Government Code, Section 87103(d).

Mr. Gardino admits that Member Johnson is not now, and never has been a director, officer, partner, trustee or employee or holds any position of management in his operations.

Government Code, Section 87103(e).

All parties agree that no gift or donation was made by any of them directly or indirectly to Member Johnson.

All parties agree that the answers mentioned above would be given with respect to Member Johnson's spouse, dependent children, agents, business entity or trust.

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COMMON LAW.

Common law provides for the disqualification of an official who has an personal or financial interest which might interfere with the unbiased discharge of his or her official duty.

The facts presented to me by the parties present no cause to suspect either a personal or financial interest on the part of Member Johnson sufficient to warrant disqualification under common law.

DFS/tla



California Fair Political Practices Commission

August 24, 1989

Howard Johnson
Councilmember
Town of Paradise
5555 Skyway
Paradise, CA 95969

Re: Letter No. 89-504

Dear Mr. Johnson:

Your letter requesting advice under the Political Reform Act was received on August 23, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John W. Wallace an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

KED:plh